

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS

DAVID W. QUALLS

PLAINTIFF

VS.

5:12-CV089-SWN

PROFESSIONAL CREDIT MANAGEMENT

DEFENDANT

MOTION TO DISMISS

Professional Credit Management, Inc., ("PCM"), by its attorneys, Marshall & Owens, a Professional Association, moves this Court to dismiss Plaintiffs' Complaint and states as follows:

1. Plaintiff, David W. Qualls, filed his complaint alleging violations of the FDCPA against Defendant on March 2, 2012.

2. On the same day, the clerk of this court issued as summons directed to: "Professional Credit Managment [sic], 500 Washington, Jonesboro, AR 72401."

3. Plaintiff has failed to properly serve the complaint and summons on the Defendant in accordance with FRCP 4(h).

4. As a result, Plaintiff's complaint should be dismissed pursuant to FRCP 12(b)(5) for insufficient service of process.

Professional Credit Management, Inc., respectfully asks that this Court dismiss the complaint against it, for its costs, a reasonable attorney's fee, and all other proper relief.

BRIEF

Plaintiff seeks to recover from Defendant based on alleged violations of the Fair Debt Collection Practices Act. However, Plaintiff has failed to serve the complaint and summons on Defendant in a manner compliant with FRCP 4. First, Plaintiff's summons identifies the defendant as "Professional Credit Managment [sic]," and lists an address for service of "500 Washington, ST, Jonesboro, AR 72401." In the body of the complaint, the agent for service of process is identified as "R. Bryant Marshall, 500 West Washington, Jonesboro, Arkansas 72401." However, no service has been attempted at that address or upon the designated agent. Further, there has been no proper service pursuant to any other option available pursuant to FRCP 4(h).

Second, the service return filed by Plaintiff shows that Vanetta Cooper purportedly served the complaint and summons on "Michelle Kendzora" at "650 South St, Mountain Home, Arkansas" on March 6th. A check box on the affidavit indicates that the service was made on the "Agent for Service." This is neither the address for service nor the agent for service identified by Plaintiff in his own complaint. Michelle Kendzora is not PCM's designated agent for service, nor is she an agent of the type identified in FRCP 4(h) as being subject to service. As a result, proper service has not been obtained in this matter.

Finally, the 8th Circuit Court of Appeals has held that "pro se litigants are not excused from complying with court orders or substantive and procedural law." *Farnsworth v. City of Kansas City, MO* 863 F.2d 33 (8th Cir. 1988). Actual notice of a lawsuit does not eliminate the requirement of proper service, otherwise "it would be nonsensical for the Federal Rules of Civil Procedure to provide for a motion to dismiss based on insufficiency of service of process." *Dahl v. Kanawha Investment Holding*

Company, 161 F.R.D. 673 (N.D. Iowa 1995). Here, Plaintiff has the burden of showing that proper service has been made and cannot do so. Consequently, Plaintiff's complaint should be dismissed.

For all these reasons, the Plaintiff's Complaint should be dismissed, and Professional Credit Management, Inc., awarded its costs, a reasonable attorneys fee, and all relief to which it is entitled.

Respectfully submitted,

Marshall & Owens, P.A.
P.O. Box 4034
Jonesboro, Arkansas 72403

By: /S/ Bryce D. Cook
Bar number 2009237
Attorneys for PCM
Telephone (870) 932-8137
E-mail: brycecook@marshallowens.com

CERTIFICATE OF SERVICE

I hereby certify that service of the foregoing was made to the following by first class mail, postage prepaid, and by electronic filing through the Federal Judiciary's Case Management/Electronic Case Filing system:

Mr. David W. Qualls
P.O. Box 247
Jefferson, AR 72079

on this 23th day of March, 2012.

/S/ Bryce D. Cook
Bryce D. Cook